

REMARKS/ARGUMENTS

Sua sponte Amendments

For internal consistency, Claim 1, element b), has been amended to recite language consistent with the recitation of element a). Claim 21 has been amended to limit the scope to interleaved devices. Support for this limitation is found, for example, on page 5, lines 25 – 29. Embodiments useful in skin stretching applications are subjected to higher tension than standard wound closure applications (see page 11, lines 9-11) and the interleaved design is preferred for this application. In light of the amendment of Claim 21, Claims 24 and 25 have been cancelled. Claim 38 has been amended to delete the recitation of steps which are recited in original Claim 40.

Objection to Claim 11

Claim 11 was objected to because it included the recitation “and/or”. It is respectfully submitted that this rejection has been overcome by the amendment of Claim 11 as set forth above. Applicant notes that Claim 33 has been similarly amended.

Rejection Under 35 USC 112, Second Paragraph

Claim 11 has been rejected under 35 USC 112, second paragraph, as the phrase “said adaptation” lacks antecedent basis. This rejection has been obviated by amendment.

Nonstatutory Double Patenting

Claims 1-41 have been rejected under the judicially-created doctrine of obviousness-type double patenting as being unpatentable over Claims 1-3, 6-7 and 19-21 of US Patent No. 6,329,564. In response to this rejection, attached is an executed Terminal Disclaimer document prepared under the provisions of 37 CFR 1.321. Applicant notes that MPEP Section 804.02 states specifically that:

The filing of a terminal disclaimer to obviate a rejection based on nonstatutory double patenting is not an admission of the propriety of the rejection. *Quad Environmental Technologies Corp. V. Union Sanitary District*, 946 F.2d 870, 20 USPQ2d 1392 (Fed. Cir. 1991). The court indicated that the “filing of a terminal disclaimer simply serves the statutory function of removing

the rejection of double patenting, and raises neither a presumption nor estoppel on the merits of the rejection”.

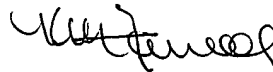
Indeed, Applicant believes the claimed subject matter to be nonobvious over the cited prior art, if it were properly citable as a prior art reference under 35 USC 102. As further stated by the Court in *Quad Environmental Technologies Corp. V. Union Sanitary District* (946 F.2d 870, 20 USPQ2d 1392 (Fed. Cir. 1991)):

Thus the “obviation” of obviousness-type double patenting by filing a terminal disclaimer has no effect on a rejection under § 103 based on the first-filed patent. Such a rejection can not be overcome by a terminal disclaimer.

Summary

In light of the above amendment, consideration of the subject patent application is respectfully requested. Any deficiency or overpayment should be charged or credited to Deposit Account No. 500282.

Respectfully submitted,



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